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The background of the changed attitude of Western European States with respect to multiple nationality

Gerard-René de Groot

At the beginning of the twentieth century, nearly all European countries tried to design their nationality legislation so that an individual person could only possess one nationality at a time. Statelessness was considered to be an anomalous situation and the same thing applied to dual or even multiple nationality. The general opinion was that multiple nationality would create complications, amongst which conflicting loyalties to different national states involved was considered to be the most problematic. Moreover, multiple nationality would conflict with the very nature of nationality as such, being an exclusive link between a person and a state. The French author André Weiss (1907) expressed this (p. 25) with a reference to the words of Proudhon (1848): 'Nobody can have more than one nationality, like nobody can have more than one mother' (p. 93).

At the beginning of the twentieth-first century, we all have hesitations to agree with this statement. In the first place, a question mark is already well founded in consideration of the new developments in the methods of artificial human reproduction. Moreover, the general attitude regarding nationality has changed considerably over the course of the past century. The object of this contribution is to describe these developments.

An important means to realise the principle that a person only would possess one nationality was the rule that voluntary acquisition (at least naturalisation) of a foreign nationality would automatically entail the loss of one's nationality of origin. Around 1900 almost all European states had this ground for loss of their nationality¹. Some states maintained the principle of perpetu-

1. Belgium (Art. 17 (1) Cc), Bulgaria, France (Art. 17 (1) Cc), Greece (Art. 23 (1) Cc), Italy (Art. 11 (2) Cc), Luxembourg (Art. 17 (1) Cc), Netherlands (Art. 7 (1) Act 1892), Norway (Art. 6 (a) Act 1888), Portugal (Art. 22 (1) Cc), Rumania (Art. 17a Cc), Spain (Art. 20 Cc), Sweden (Art. 5 Act 1894; with some formalities to be observed), United Kingdom (Sect. 6 Act 1870; however, a possibility to make a declaration of retention existed). Sources: Weiss (1907) and Polizeibehörde der Freien und Hansestadt Hamburg (1898).

al allegiance to the nation well into the twentieth century, like for example Russia (Tratnik, 1989, p. 59; Weiss, 19-20, 695-6)². In other states, such as Austria, Denmark, Germany and Turkey, voluntary acquisition of a foreign nationality only implied loss of nationality if the acquisition had the consent of the state of origin, or if renunciation of nationality was permitted after the acquisition of a foreign nationality³. Finally it has to be mentioned that Swiss nationality legislation only acknowledged loss of nationality on the initiative of the individual⁴. Furthermore, in addition to voluntary acquisition of a foreign nationality as a ground for forfeiture, many countries had as one of the conditions for naturalisation the renunciation of a previous nationality if this nationality was not lost *ex lege*.

Another set of rules that made cases of multiple nationality quite rare was the general application of the so called unitary system⁵ of nationality within a family. A foreign woman who married a national generally acquired her husband's nationality. By marrying a foreigner, a woman thus lost her original nationality⁶. Hence, husband and wife possessed one and the same nationality, which in *ius sanguinis* countries was then transferred to their children. If a husband acquired some other nationality during the marriage, thus losing his original nationality, his wife (and in most cases their children) also followed this new nationality position.

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2. The same principle of perpetual allegiance was followed by the United Kingdom until 1870.
 3. Austria, Denmark (Art. 5 Act 1898), Germany (art. 13 Act 1870) and Turkey (art. 5 Act 1869). Austria and Germany introduced voluntary acquisition of a foreign nationality as a more general ground for loss of their nationality some years later: Austria in 1925 (Par. 10 (1) Act 1925) and Germany in 1913 (Par. 25 Act 1913). A remarkable fact is that both countries still provided for exceptions to the main rule, for example by having the possibility of a permit of retention. Turkey always maintained the condition of consent for the acquisition of a foreign nationality: voluntary acquisition had no consequences *ex lege*.
 4. See Art. 6 (c) Act 1876; Weiss (1907), 19-20, 755-9.
 5. Dutoit (1973 and 1980) introduced the expressions: 'système unitaire' (in the main text translated with 'unitary system') and 'système dualiste' (translated with 'dualist system').
 6. Austria (Par. 32 ABGB), Belgium (Art. 17 (3) Cc), Denmark, Germany (Art. 13 Act 1870), Greece (Art. 25 Cc), Luxembourg (Art. 17 (3) Cc), Netherlands (Art. 5 Act 1892), Rumania (Art. 19 Cc), Russia (Art. 15), Spain (Art. 22 Cc), Sweden (Art. 6 Act 1894), Switzerland, Turkey (compare: Art. 7 Act 1869), United Kingdom (Sect. 10 (1) Act 1870).

One disadvantage of this system was that in most countries women would also lose their nationality if they married a stateless person or if their husband became stateless during the marriage. In order to avoid this inconvenience some states provided that women only lost their own nationality if they acquired the nationality of their husband.⁷ Later on this policy was encouraged by the 1930 Convention on nationality that was concluded in The Hague and initiated by the League of Nations. Art. 8 ff. of that Convention provided that women no longer would lose their nationality by or during the marriage if the consequences would be that they were to become stateless. These provisions were *inter alia* a reaction to the fact that after the revolutions of 1918 the number of stateless persons had increased.

As early as during the twenties some countries took an additional step by granting women an even more independent position through ensuring that marriage would not affect the nationality of women. The Soviet Union, Bulgaria and France⁸ were the first states to introduce this clause. Some other states made it possible for women to retain their own nationality after marriage by making a declaration.⁹

The next step was of course to allow women to transmit their own nationality on the same conditions as men to their children. Only the Soviet Union provided for that possibility before World War II¹⁰. Since 1927 the French nationality act provides the transmission of French nationality to children born to a French mother on French territory (see de Groot 1989, 80). After World War II several countries in Eastern Europe gradually started to recog-

7. Bulgaria (Art. 25; this provision was very liberal; no loss *ex lege*, but marriage was a ground for renunciation on initiative of the woman involved, see Tratnik, 1989, p. 125), France (Art. 19), Italy (Art. 14), Norway, Portugal (Art. 22 (4)). See Weiss. 1907, p. 24. Some other states introduced this condition during the twenties or thirties of the twentieth century: Austria (since 1925); Denmark (since 1925), Finland (since 1927), Greece (since 1926), Iceland (only loss if residence abroad), Netherlands (since 1937, but with retroactivity to 1893), Norway, Sweden (since 1924), United Kingdom (since 1934).

8. Soviet Union in 1918. Bulgaria: see previous footnote. Since 1927 until 1938 exclusively loss of nationality by a French woman marrying a foreigner, if the spouses were living abroad and the nationality of the husband was acquired; since 1938 no loss by marriage anymore.

9. Austria (since 1947); Belgium (since 1926); Greece (since 1955); Luxembourg (since 1934); Switzerland (since 1941), United Kingdom (since 1934).

10. Already since 1918, see Tratnik (1989), p. 89-90.

nise the fully independent position of women in nationality matters, and also accepted that the transmission of nationality to the next generation would occur on the same conditions as applied to men, thus following the example of the Soviet Union¹¹. A further remarkable development in these countries was that they abolished voluntary acquisition of a foreign nationality as a ground for loss, again following the example of the Soviet Union.¹²

An important development was the 1957 Convention on the nationality of married women¹³ initiated by the United Nations. This was the first worldwide¹⁴ multinational convention that sought to create a completely independent nationality position for married women (a so called dualist system), although the convention also prescribed that the acquisition of her husband's nationality should be facilitated. Since the principles of the 1957 Convention were gradually implemented in the nationality legislation of various states¹⁵, demands for the possibility of a mother to transfer her nationality to her children increased in Western European countries.

In Western Europe the Council of Europe has been active in the field of nationality law. The issue of multiple nationality was raised as early as in 1949. At the seventeenth sitting of the first session of the Consultative Assembly on the 7th September 1949 a report dealing with the legal status of foreigners

11. Albania 1946, Bulgaria 1948, German Democratic Republic 1954, Hungary 1957, Yugoslavia 1945, Poland 1951, Rumania 1948, Czechoslovakia 1949.

12. Albania 1946, Bulgaria 1948, German Democratic Republic 1949, Hungary 1957, Yugoslavia 1945, Poland 1951, Rumania 1948, Czechoslovakia 1949.

13. UNTS 309, 65.

14. In Latin America an earlier convention was concluded on the nationality position of women: *Convencion sobre nacionalidad de la mujer*, concluded in Montivideo 26 December 1933.

15. Some states already granted women an independent position in nationality law long before the 1957 Convention was concluded. Denmark, Norway and Sweden abolished loss by marriage in 1951; Iceland followed these examples in 1953. Germany abolished loss of nationality by marriage in 1953 as a consequence of the equal treatment provision of Art. 3 of the German constitution. The United Kingdom abolished loss by marriage in 1949. Other States were considerably later with abolishing loss of nationality by marriage: Netherlands (1964); Austria (1965, but since 1947 a permit of retention was possible), Finland (1968); Italy (1975); Luxembourg (1975, but since 1934 a declaration of retention was possible); Spain (1975); Portugal (1981, but earlier already possibility of declaration of retention); Greece (1982, but since 1955 possibility of retention); Belgium (1985; but since 1926 a declaration of retention was possible); Switzerland (1990, but since 1941 a declaration of retention was possible).

was presented by Mr Azara on behalf of the Committee on Legal and Administrative Questions¹⁶. Its ultimate aim was to institute a common European nationality and a European passport. It was concluded that the question of a European nationality was not ready for submission to the Assembly. A Committee was appointed to study the desirability and feasibility of a European nationality or a system of multiple nationalities. I have the impression that the issue involved was *inter alia* inspired by a remark of Winston Churchill's, who suggested that the possibility of future wars in Europe would decrease if the number of persons possessing British and French nationality, French and German nationality or British and German nationality would increase.

However, in the early fifties a Committee reported to the General Assembly that multiple nationality gives rise to so many problems that an international treaty needs to be drafted with the aim to avoid cases of multiple nationality.

The important result of these activities was the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, signed in Strasbourg on 6 May 1963¹⁷ (hereinafter referred to as 'the 1963 Convention'), and its three Protocols¹⁸. The main goal of the 1963 Convention was to reduce the number of cases of multiple nationality. The most important provision of this Convention was Art. 1, which stipulates that a national of a contracting state who voluntarily acquires the nationality of another contracting state loses his previous nationality by operation of law. When the Convention was ratified this provision was in accord with the domestic nationality laws of most Western European states.¹⁹ Greece, Ireland and the United Kingdom were exceptions, although it has to be recognised that some states made exceptions to the rule that voluntary acquisition of a foreign nationality would entail the loss of one's previous nationality, for example in the case of residing in one's country of ori-

16. First ordinary session, 17th sitting, Doc. 96; see also the official report No. 18.

17. ETS No. 43; UNTS 634, 221.

18. See ETS No. 95; ETS No. 96 and ETS No. 149.

19. Austria (since 1925, Par. 1C (1) (1), with exceptions); Belgium (always), Denmark, Finland, France (until 1973 (with exceptions); i.e. only eight years after the ratification of the 1963 Convention by France in 1965), Germany (Par. 25, with exceptions); Iceland, Italy (until 1992, with exceptions); Luxembourg, Netherlands, Norway, Portugal (until 1981); Spain (1954, with many exceptions), Sweden.

gin²⁰. The 1963 Convention was ratified by thirteen Western European states. However, three states ratified only the chapter on military obligations in case of multiple nationality: Ireland, Spain and the United Kingdom. Of these countries two (Ireland and the United Kingdom) no longer have voluntary acquisition of a foreign nationality as a general ground for loss of their nationality.²¹ The Spanish nationality regulation contains this ground for loss, but makes many exceptions to the general rule.²²

Most countries that ratified the nationality part of the 1963 Convention did not allow women to transmit their nationality to their children at the time. The only exception during the sixties was France. In the eighties the Netherlands ratified the Convention the same year as the equal treatment of men and women was implemented in the Netherlands' nationality act. The ratification of the 1963 Convention by Belgium in 1993 was somewhat unex-

20. For example in Germany: Par. 25 (2) Reichs- und Staatsangehörigkeitsgesetz 1913.

21. Ireland (exclusively for naturalised Irish nationals); United Kingdom introduced loss of nationality because of voluntary acquisition of a foreign nationality in 1870 but allowed a declaration of retention; since 1949 this ground for loss disappeared from the British Nationality Act.

22. Spain has ratified a considerable number of treaties allowing multiple nationality with Latin American countries. Nevertheless, normally Spain requires renunciation of a previous nationality for naturalisation (Art. 23 (b) Código civil). Voluntary acquisition of a foreign nationality was traditionally a ground for loss of Spanish nationality, although several exceptions were provided (see Art. 22 Código civil as modified in 1954), but this was revised completely in 1982. After that modification, voluntary acquisition of a foreign nationality did not cause the loss of Spanish nationality, if the foreign nationality was acquired for reasons of emigration ('por razon de emigración'). But that rule was again modified in 1990. Since then voluntary acquisition of a foreign nationality may cause the loss of nationality, if the person involved after having acquired the foreign nationality stays abroad for a period of three years. However, the nationality is not lost, if one for example still uses Spanish travel documents. Moreover, Spanish nationality is never lost in case of acquisition of the nationality of a Latin-American country, or of Andorra, The Philippines, Equatorial Guinea or Portugal. Nevertheless, in 1999 a new proposal was made by a member of the Senate to once again allow the retention of Spanish nationality for emigrants of Spanish origin living abroad, even when they possess the nationality of their country of birth (proposal of Jesús Merino, who would like children of emigrants to acquire Spanish nationality without renouncing their foreign nationality. *El País*, November 1999). Compare also the recent modification of the Spanish nationality law by Act 36/3002 of 8 October 2002 (Boletín oficial de Estado 9 October 2002, Nr. 242). See on the developments regarding the treaties between Spain and the Latin American Countries De Groot (2002b). The Spanish debate on multiple nationality seems to have become a never-ending story.

pected. It was eight years after the introduction of the equal treatment of men and women in Belgian nationality law.

In spite of the 1963, Convention cases of multiple nationality have increased immensely since the seventies. Mainly this was due to the fact that different European states tried to realise the principle of equal treatment of men and women in their nationality legislation. As a consequence, the rules on acquisition of nationality were modified in order to provide women with the same rights as men to transmit their nationalities to their children²³. The fact that multiple nationality was blacklisted and to be avoided as often as possible, and yet at the same time accepted as a consequence of mixed marriages, was a reason to start new discussions in several countries on the desirability of avoiding cases of multiple nationality. Obviously the question needs to be raised about why cases of multiple nationality exist and are accepted as a consequence of applying the *ius sanguinis principe a matre et a patre* while at the same time other determinants of multiple nationality were opposed. How can it be justified that persons born as children of parents with different nationalities can formally have the nationalities of both parents while children of foreigners who want to acquire the nationality of their country of birth should lose the nationality of their parents?

The institutions of the Council of Europe were rather active in dealing with nationality matters related to mixed marriages (see de Groot, 1994, 420-62). In particular the Resolutions of the Committee of Ministers of 1977 on the issue of spouses of different nationalities, and on the nationality of their children born in wedlock, as well as the Assembly Recommendation 1988 on problems of nationality in mixed marriages deserve to be mentioned. Resolution (77) 12 recommended that governments take steps to ensure that foreign spouses to nationals of the country may acquire the country's nationality on more favourable conditions than those generally required of aliens. Furthermore it recommended an elimination of distinctions between foreign husbands and foreign wives as regards the acquisition of nationality. Resolution (77) 13 recommended that the acquisition of the country's nationality be facilitated for children born in wedlock if one of the parents was a national.

23. In chronological order: France already 1945; Ireland in 1956; Germany 1975, Denmark, Norway and Sweden 1979; Iceland 1982; Austria, Italy and United Kingdom 1983; Portugal 1981; Spain 1982; Greece 1984; Belgium and Netherlands 1985; Luxembourg 1987; Switzerland 1990.

Recommendation 1081 (1988) noted that it was desirable for each of the spouses of a mixed marriage to be entitled to acquire the nationality of his/her partner without forfeiting the nationality of origin. Furthermore, children born in mixed marriages should also be entitled to acquire and keep the nationality of both parents.

It is remarkable that these recommendations not only stress the desirability of the acquisition of the nationality of both parents by children born of mixed marriages, but since 1988²⁴ also underpin the right of these children to keep these nationalities. One has to realise that allowing a spouse in a mixed marriage to acquire the nationality of his/her partner without losing the original nationality, makes an exception to the main rule of the 1963 Convention necessary. And again one has to ask why an exception is made in this type of case and not in other cases?

It has to be mentioned that at least some Western European countries modified their nationality legislation in order to reduce the number of cases of multiple nationality occasioned by the application of the *ius sanguinis principle a patre et a matre*. In 1985 Belgium limited the possibility of transmitting Belgian nationality *iure sanguinis* in case of birth abroad: the second generation born abroad does not automatically acquire Belgian nationality *iure sanguinis* anymore. The Belgian parent(s) has to make a declaration of option in favour of Belgian nationality for his child within five years of its birth (Art. 8 (1) (2) Act 1985). This limitation of transmission of nationality in case of birth abroad is a model that was already applied by Portugal and the United Kingdom. Very recently this construction was also introduced in the German nationality legislation. This model does not conflict with the recommendations just mentioned and it conforms furthermore with the 1963 European convention on nationality.

An Italian attempt to resist cases of multiple nationality acquired at birth is noteworthy. Art. 5 (1) Act 123 of 1983 obliged the child involved to make a choice between the nationalities acquired at birth within one year of having reached the age of majority. From a technical point of view, the Italian provision was badly constructed. One could retain all nationalities acquired at birth by making an option in favour of Italian nationality, because Italian legislation did not require evidence on the renunciation of other nationali-

24. It should be stressed that this was still different in the in 1977 adopted resolutions.

ties.²⁵ More importantly, the Italian construction conflicts with the recommendation of 1988 and the European convention on nationality of 1997, where the right to keep the nationalities acquired at birth is stressed in Art. 14 (1) (a). The Italian provision was abrogated in 1992. Since then, Italy accepts cases of dual nationality without attempting to reduce those cases by forcing nationals involved to make a choice.

In a short digression, some information has to be given about the developments in Eastern Europe. The Eastern European countries tried to avoid cases of multiple nationality as a consequence of the transmission of their nationality *iure sanguinis a matre et a patre* and as a consequence of a voluntary acquisition of a foreign nationality. This was achieved by concluding a number of bilateral treaties. With countries in Western Europe such bilateral conventions did not exist²⁶ and the number of persons acquiring a Western and an Eastern European nationality through *iure sanguinis* therefore increased. As a consequence, of these developments the number of persons holding the nationalities of more Eastern European countries was quite modest, but the number of persons holding the nationalities of an Eastern and a Western European country increased. Again, the question had to be raised: why should one accept that persons acquired multiple nationality by voluntary acquisition of a foreign nationality in cases of combining an Eastern and Western nationality? And why should one oppose a combination of two Western European countries, although the cooperation of the Western European states was in those times undoubtedly much closer than the ties between Eastern and Western European states?

Other factors were, for some states at least, additional incentives for seeking to attain new discussions on the subject of multiple nationality. Since the end of the fifties many migrant workers from Southern Europe came to work in Northern Europe. Originally, it was expected that they would return to their home countries after a couple of years. But several decades later, it was quite obvious that most migrant workers and their families would not return to their countries of origin, but had settled permanently in Northern

25. The comparable Japanese provision has a considerably better construction. In case of an option in favour of Japanese nationality one has to prove to the Japanese authorities that other nationalities acquired at birth are lost, otherwise the option is void. See Art. 14-16 Japanese nationality act.

26. Although with Austria and the United States treaties were concluded on the treatment of dual nationals.

Europe. Many wanted to integrate completely in their countries of residence and to acquire the nationality of this country. However, they did not want to do so by renouncing their nationality of origin or cut off ties with their countries of origin, respectively the countries of origin of their parents or even grandparents. From the perspective of the countries of residence the integration of increasing numbers of permanently residing aliens through nationality was a serious concern. Furthermore, it is important to observe that most migrant workers had no problems of maintaining ties with their countries of origin even after having acquired the nationality of their country of residence.²⁷

After lengthy negotiations in Strasbourg, a Second Protocol to the 1963 Convention was finally opened for signature on 2 February 1993²⁸. This second Protocol amended the main principle of Art. 1 of the 1963 Convention. Voluntary acquisition of a foreign nationality would not *necessarily* occasion the loss of the previous nationality, if

a national acquires the nationality of another Contracting Party on whose territory he either was born and is resident, or has resided regularly for a period of time beginning before the age of 18;

* a spouse acquires the nationality of the other spouse of his or her own free will;

* a minor whose parents are nationals of different Contracting Parties acquires the nationality of one of its parents.

It is obvious that the Protocol follows the ideas already indicated by the Recommendations of the Council of Europe. In principle, the concept of the 1963 Convention is maintained, but exceptions are introduced. The exceptions only apply between the contracting states of the 1963 Convention that have also ratified the Protocol.

However, only three contracting states of the 1963 Convention have ratified this Second Protocol during the past few years: France, Italy and the Nether-

27. Compare the fact that the nationality legislation of Turkey, Greece, Italy and Portugal does not contain voluntary acquisition of a foreign nationality as a ground for loss, and Spain makes many exceptions to this particular ground for loss.

28. ETS No. 149.

lands.²⁹ Five³⁰ other states bound by the nationality chapter of the 1963 Convention obviously still refuse to make exceptions: Austria, Belgium, Denmark, Luxembourg, and Norway. Art. 1 of the 1963 Convention is no longer operative between France, Italy and the Netherlands for the categories mentioned in the protocol. The French and Italian nationality statutes do not mention voluntary acquisition of a foreign nationality as a ground for loss of nationality. Therefore, French and Italian nationals belonging to the categories mentioned in the second Protocol may acquire the nationality of another country that has ratified the Second Protocol without forfeiting their original nationality. Dutch nationals still lose their previous nationality when acquiring French or Italian nationality even if they belong to the privileged categories of the Second Protocol, because the Netherlands has still not modified its domestic nationality legislation. The Netherlands' nationality statute, still in force, mentions in Art. 15 sub a voluntary acquisition of a foreign nationality as a ground for loss of Dutch nationality. Therefore, in cases covered by the second Protocol a Dutch national who acquires French or Italian nationality no longer loses his/her Dutch nationality because of the operation of Art. 1 of the 1963 Convention, but as a consequence of the provision of Art. 15 sub c of the nationality statute. A statute amending, *inter alia*, Art. 15 is already published in the Official Journal of the Kingdom of the Netherlands³¹, but has not yet come in force.³²

At the meetings of experts delegated by the member states of the Council of Europe³³ with the aim to negotiate on exceptions to the principles of the 1963 Convention, the proposal was made to draft a Convention on the gen-

29. Italy ratified the Second Protocol on 27 January 1995, France on 23 February 1995 and the Netherlands on 19 July 1996. The Second Protocol came in force between the first two states one month after the second ratification, i.e. on 24 March 1995. The Netherlands are bound by the Protocol since the 20 August 1996. See *Tractatenblad* 1994, 265 and 1996, 201.

30. At the moment of drafting this contribution (March 2002) seven other States are still bound by the nationality chapter of the 1963 convention. However, Sweden and Germany denounced the Convention in June, respectively December 2001 and will therefore no longer be bound by the Convention.

31. *Staatsblad van het Koninkrijk der Nederlanden*.

32. Statute of 21 December 2001, *Staatsblad* 618. It is expected that the statute will come in force on 1 April 2003. See on the new legislation *De Groot* (2002 c) and *De Groot/Tratnik* (2002).

33. The Committee involved was first called Committee of experts on multiple nationality (CJ-PL), but later renamed as Committee of experts on nationality (CJ-NA).

eral principles on nationality.³⁴ The creation of such a new Convention was considered particularly desirable in order to provide some basic standards in the field of nationality for the new democracies born in Eastern Europe after 1989. It was also timely to realise some harmonisation of the grounds for acquisition and loss of nationality in the different European states. These meetings came up with the European Convention on nationality³⁵, which was opened for signature by the Council of Europe on 6 November 1997.

Important issues highlighted in the new Convention are measures to avoid a situation of statelessness and to settle the legal position of aliens living permanently on the territory of a state. According to the preamble to the new convention, the right to respect for family life and the non-discrimination requirement contained respectively in Articles 8 and 14 of the European Convention on Human Rights have relevance for nationality law³⁶. The new Convention devotes four articles (Art. 14-17) to cases of multiple nationality. These articles demonstrate a hesitant attitude, which is also shown by the Second Protocol to the 1963 Strasbourg Convention: States may avoid cases of multiple nationality, but should not do so in all circumstances. The issue of multiple nationality should not constitute an obstacle for any state to ratify the Convention according to the articles in the present Convention. Neither the rules of the 1963 Convention nor the exceptions of the Second Protocol are included in the new Convention. Member states of the 1963 Convention (or the 1993 Protocol) are able to ratify the new Convention without problems, but the same is true for states that did not ratify those international instruments.

The European convention on nationality came in force on 1 March 2000 (three months after the ratification by the third contracting state). It is interesting to note that Austria, which is still very much in favour of the policy developed by the 1963 Convention, was among the first three states to ratify

34. After a feasibility study the CJ-NA started to prepare a draft text of a convention in November 1993. Jessurun d'Oliveira (1998) mentions that the history of the new convention actually started earlier with some attempts since 1988 to add a Treaty on nationality as an additional protocol to the European Convention on Human Rights (p. 8).

35. ETS No. 166; Tractatenblad 1998, 10 (English and French version) and Tractatenblad 1998, 149 (Dutch translation).

36. See Abdulaziz, Balkandali and Cabeles v United Kingdom, ECHR 28 May 1985, series A, vol. 94.

the new Convention. The two other states which ratifications were decisive with regard to bringing the convention into force (Slovakia and Moldova) do not have voluntary acquisition of a foreign nationality as a ground for loss of nationality in their legislation. Par. 9 (1) of the Slovakian law of nationality³⁷ only makes the renunciation of nationality possible on request. Art. 23 (1) (d) of the Moldovan law of nationality³⁸ mentions voluntary acquisition of the nationality of another state as a ground for deprivation of nationality by the decision of the president of Moldova. Generally speaking, Moldova is not in favour of cases of multiple nationality.³⁹ However, it has to be stressed that some states, accepting dual nationality in case of voluntary acquisition of a foreign nationality (without making any difficulties), ratified the convention (Portugal and Sweden are examples).

The different attitudes of the member states of the Council of Europe in respect to multiple nationality should be kept in mind while reading the careful provisions of the new European Convention on this issue. The Convention prescribes that children⁴⁰ with different nationalities automatically acquired at birth should not be forced to make a choice between their nationalities (Art. 14). The same thing applies to persons who *ex lege* acquire a second nationality by marriage.

Nevertheless, one should realise that the grounds for loss permitted by Art. 7 may be applied to these persons. Therefore, a nationality acquired by those children or spouses may - *inter alia* - be lost due to a lack of a genuine link (Art. 7 (1) (e) Convention). A genuine link with a state may be lacking if a national was born abroad and did not develop relevant ties with the state involved. Of course, loss of nationality on this ground is only acceptable if the

37. Act of 19 January 1993.

38. Act of 2 June 2000, No. 1023-XIV, published in the *Monitorul Oficial* of the Republic of Moldova No. 98-101 709 of 10 August 2000.

39. Art. 4 of the Moldovan law of nationality provides: 'Citizens of the Republic of Moldova shall not be citizens of other states, except in cases provided by international agreements to which the Republic of Moldova is a party.' Although it is certainly beyond the powers of Moldova to avoid that a national also possesses the nationality of another state, this article manifests the strong feelings of Moldova against cases of multiple nationality.

40. According to the definition of the term in Art. 2 (c) Convention 'children' are persons up to the age of 18.

person involved also possesses some other nationality and is therefore not at risk of becoming stateless.

Art. 15 emphasises that the provisions of the Convention do not limit the right of a state to decide whether its nationals acquiring the nationality of another state should retain or lose the nationality they possess. Moreover, a state is free to provide that the acquisition or retention of its nationality is subject to the renunciation or loss of another nationality. The explanatory report on this provision underscores:

‘The new Convention is neutral on the issue of the desirability of multiple nationality. Whereas Chapter I of the 1963 Convention was intended to avoid multiple nationality, Article 15 of this Convention reflects the fact that multiple nationality is accepted by a number of states in Europe, while other European states tend to exclude it.

However, the possibility for a state to allow multiple nationality will be subject to any contrary binding international obligations. In particular, states which are bound by Chapter I of the 1963 Convention will not, as regards their respective nationals, be able to allow more than a limited number of cases of multiple nationality’

Art. 16 states that a state party shall not require persons to renounce their nationality of origin in order to acquire its nationality where such renunciation is not possible or cannot reasonably be required. This formulation has similarities with the wording of Art. 9 (1) (b) of the Netherlands’ Nationality Act: an applicant possessing a foreign nationality has to make every effort to renounce that nationality or has to promise to make such efforts after his naturalisation, unless this cannot reasonably be expected of him. Of course everything depends on the interpretation in practice of what can still be reasonably expected.

Art. 17 paragraph 1 underlines the fact that nationals of a state party in possession of another nationality have in the territory of the state party in which they reside, the same rights and duties as other nationals of that state party. This provision is reminiscent of the wording of Art. 3 of the 1930 Hague Convention on Nationality⁴¹. The second paragraph of Art. 17 mentions that the rules of international law concerning diplomatic or consular

41. UNTS 179, 89.

protection by a state party in favour of one of its nationals who simultaneously possesses another nationality are not affected. The explanatory report makes an interesting remark about this provision. It refers, in the first place, to Art. 4 of the 1930 Convention on Nationality which provides that 'A state may not afford diplomatic protection to one of its nationals against a state whose nationality such a person also possesses.' Then the report continues:

'However, owing to the developments that have taken place in this area of public international law since 1930, in exceptional individual circumstances and while respecting the rules of international law, a state Party may offer diplomatic or consular assistance or protection in favour of one of its nationals who simultaneously possesses another nationality, for example in certain cases of child abduction.'

Also, it is interesting to mention that in a previous draft of the present Convention the provision involved was formulated differently:

'a State Party may afford diplomatic protection to one of its nationals, for humanitarian or similar purposes, against a State whose nationality the person concerned also possesses.'

Finally, Art. 17 states that rules of private international law in case of multiple nationality are not affected.

It is already mentioned above that the European convention on nationality came in force in the year 2000 after the ratification by Austria, Moldova and Slovakia. In 2001 Hungary, the Netherlands, Portugal and Sweden ratified the convention. In 2002 Denmark did so too. Of these countries Hungary does not provide for the loss of Hungarian nationality in case of voluntary acquisition of a foreign nationality. Portugal abolished that ground for loss in 1981, and so did Sweden in 2001.⁴² The Netherlands' nationality act still contains a provision on the loss of Dutch nationality in case of birth abroad, but the statute of 21 December 2000 amending the Netherlands' nationality act makes several exceptions to this rule inspired by the rules of the 1993 Second protocol on the 1963 convention. Of the just mentioned countries Austria, Denmark, the Netherlands and Sweden were contracting states to the 1963 convention. Austria and Denmark are still bound by that conven-

42. Lag om svenskt medborgarskap of 1 March 2001.

tion, and so is the Netherlands that ratified the Second protocol. Sweden, however, decided to denounce the 1963 convention as a whole. So did Germany! Germany has not yet ratified the European convention on nationality but is preparing a ratification. In view of a future accession to the European convention, Germany already denounced the 1963 Convention on 21 December 2001. The steps taken by Sweden and Germany manifest a clear change of attitude towards cases of multiple nationality.

If we try to describe the attitudes of the different Western European countries⁴³ with respect to multiple nationality anno 2002, we can make following observations (see de Groot, 2002 a):

Some countries seek to avoid multiple nationality as far as possible. They still consider multiple nationality as an abnormal situation, which causes numerous technical legal problems and conflicts with the idea of solidarity between a nation and its nationals. A person should only have one nationality just as he only has one mother. Austria, Belgium, Denmark, Finland, Luxembourg, and Norway belong to this group of countries. With the exception of Finland all these countries are bound by the 1963 Convention. Nevertheless, the domestic nationality legislation of these countries, apart from Belgium, allow exceptions to the rule that voluntary acquisition of a foreign nationality occasions the loss of one's original nationality. However, it is remarkable that Belgium of all countries does not require the renunciation of a previous nationality in order to qualify for naturalisation. In some of these countries the feasibility and desirability of allowing more cases of multiple nationality is discussed.

Another group of countries tries to avoid cases of multiple nationality, but accept exceptions, as for example was the case in the 1993 Protocol. In these cases the contracting states accept that a person has such close links with more than one state due to his personal circumstances that the possession of more than one nationality is a manifestation of real, genuine ties with the countries in question. France, Iceland, Italy, Netherlands and Spain belong to this group. Three of these countries (France, Italy and Netherlands) are bound by the 1963 Convention and by the amendments of the Second Protocol. Iceland and Spain are not bound by these international instruments.

43. This contribution concentrates on the Member States of the European Economic Area.

France and Italy take a very special position within this group, which accept multiple nationality in their domestic nationality law, but which are nevertheless contracting states of the 1963 Convention and the 1993 protocol. If the statute of 21 December 2000 amending the Netherlands nationality act will come in force in 2003, the Netherlands will also tolerate a considerable number of cases of multiple nationality, but has not yet denounced the 1963 Convention and the 1993 Protocol⁴⁴.

Again other countries pay little or no attention to cases of multiple nationality at all. Greece, Ireland, Portugal, Sweden, Switzerland and the United Kingdom belong to this group. Naturalisation is possible without renunciation of another nationality; voluntary acquisition of a foreign nationality is not a ground for loss of nationality⁴⁵.

It is obvious that the last two groups of countries are growing and the first is declining rapidly. Nevertheless, it is likely that the discussion about the pros and cons of multiple nationality will continue for the next few years. An important issue will be whether persons with multiple nationality should have the right to full political participation in all the countries of which they possess nationality.⁴⁶ Furthermore, the question has to be raised whether the transmission of nationality by nationals born abroad should be limited in order to recognise that a nationality is still a manifestation of a real link between a person and a state (see de Groot, 2001 and 2002 a). In Europe, an additional question should be raised: should the cumulation of the nationalities of the member states of the European Union be allowed without any limitation, because all these nationalities entitle to European citizenship?

44. The reason that the Netherlands has not yet denounced the 1963 Convention is mainly due to the fact that the provisions on military services in that convention were still considered to be useful. Although nearly identical provisions are included in the European convention on nationality, the corresponding provisions of the new convention will only apply in relationship to the Contracting States to that new convention. In order to maintain the same rules in relationship to States bound to the 1963 convention and not (yet) bound by the new convention, it was decided to stay a party to the old convention. Now Germany and Sweden took another decision, the Netherlands may consider to denounce the 1963 Convention as well.

45. Exclusively the naturalisation of a foreigner in Ireland may be revoked, if this naturalised Irish national acquires voluntarily a foreign nationality Section 19 (1) (e) Irish Nationality Act).

46. See on that issue several contributions in the book edited by Martin and Hailbronner (2002).

It is astonishing that the issue of possible multiple nationalities within the European Union has not been raised until now. This is *inter alia* caused by the fact that nationality matters are still cherished as a field of national autonomy by the member states of the Union. The Union does not have competence to legislate in nationality matters. Although it has to be admitted that it grows all the less important what nationality of a member state a person precisely possesses. To be or not to be a European citizen is the core issue. In this perspective it becomes less interesting to resist a cumulation of member states of the European Union. I can imagine, that in the future the cumulation of nationalities of Member states of the European Union will be allowed without any limitation. The question will then be in which circumstances it will be allowed for a European citizen to possess an additional nationality of a non-EU-member state.

Schedule

This schedule indicates whether voluntary loss of a certain foreign nationality causes the loss of the nationality of the country involved. Furthermore it is mentioned whether and when a country ratified chapter I of the 1963 Convention on the reduction of cases of multiple nationality, because of the effect of art. 1, which causes loss of nationality in case of voluntary acquisition of the nationality of another contracting states. The ratifications of the Second Protocol to the 1963 Convention are indicated as well. Finally the ratification, respectively signature of the 1997 European Convention on Nationality abbreviated as ECN) is mentioned.

| | |
|---------|--|
| Austria | loss, with exceptions (permission); ratification 1963 convention in 1975 with reservations; ratification ECN in 1998 |
| Belgium | loss, with exceptions (military service), ratification 1963 convention in 1991 |
| Denmark | loss; ratification 1963 convention in 1972; ratification ECN in 2002 |
| Finland | loss; signature ECN in 1997 |
| France | no loss since 1973; but ratification 1963 convention in 1965 and 2nd protocol in 1995; signature ECN in 2000, |

| | |
|----------------|--|
| | ratification expected in 2002/2003 |
| Germany | loss, with exceptions (permission); ratification 1963 convention in 1969 with reservations (taken back in 1975), but denunciation 1963 convention in 2001; signature ECN in 2002 |
| Greece | no; but deprivation possible if no permission, signature ECN in 1997 |
| Iceland | loss; signature ECN in 1997 |
| Ireland | no, with exceptions (naturalized citizens) |
| Italy | no loss since 1992, with exceptions (war) and ratification 1963 convention in 1968 and 2nd protocol in 1995; signature ECN in 1997 |
| Luxembourg | loss; ratification 1963 convention in 1971 |
| Netherlands | loss; statute 2000/2003 allows exceptions 2nd protocol; ratification 1963 convention in 1985 and 2nd protocol in 1996; ratification ECN in 2001 |
| Norway | loss; ratification 1963 convention in 1969; signature ECN in 1997 |
| Portugal | no loss since 1981; ratification ECN in 2001 |
| Spain | loss, with many exceptions (war, acquisition of specific foreign nationalities) |
| Sweden | no loss since 2001, ratification 1963 convention in 1969, denunciation 1963 convention in 2001 |
| Switzerland | no, ratification ECN in preparation |
| United Kingdom | no loss since 1949, ratification ECN in preparation |

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